No. 2425.

In the

United States Circuit Court of Appeals

For the Ninth Circuit

FARMERS AND MERCHANTS' BANK, PHOENIX, as Intervener,
Appellant.

vs.

ARIZONA MUTUAL SAVINGS AND LOAN ASSOCIATION and ARIZONA TRUST COMPANY and SIMS ELY, as Receiver for the ARIZONA MUTUAL SAVINGS AND LOAN ASSOCIATION and ARIZONA TRUST COMPANY, and the Intervening Petitioners Who were Allowed to Intervene in the cause Entitled CHARLES W. CLARK, Complainant, vs. ARIZONA MUTUAL SAVINGS AND LOAN ASSOCIATION and ARIZONA TRUST COMPANY, Defendants, in the Court Below, by the Decree of March 12, 1914,
Appellees.

MOTION AND PETITION FOR REHEARING OR TO CERTIFY QUESTION TO U. S. SUPREME COURT OR FOR STAY OF MANDATE

PAUL RENAU INGLES,
Solicitor for Appellant,
Fleming Block,
Phoenix, Arizona.

The McNeil Co. Phoenix, Arizona

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

FARMERS AND MERCHANTS' BANK, PHOENIX, as Intervener, Appellant. vs. ARIZONA MUTUAL SAVINGS AND LOAN ASSOCIATION and ARIZONA TRUST COMPANY and SIMS ELY, as Receiver for the ARIZONA MUTUAL SAVINGS AND LOAN ASSOCIATION and ARIZONA TRUST COMPANY, and the Intervening Petitioners Who were Allowed to Intervene in the cause Entitled CHARLES W. CLARK, Complainant, vs. ARIZONA MUTUAL SAVINGS AND LOAN ASSOCIATION and ARIZONA TRUST COMPANY, Defendants, in the Court Below, by the Decree of March 12, 1914, Appellees.	No. 2425 MOTION AND PETITION FOR REHEARING.

And now within the time prescribed by law comes the appellant above named and moves this Honorable Court to grant a rehearing in this cause and to grant the other relief specified in the

petition hereto annexed upon the grounds therein set forth and for such other relief in the premises as may be proper.

Dated February 23, 1915.

PAUL RENAU INGLES,

Solicitor for Appellant,
Fleming Building,
Phoenix, Arizona.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

FARMERS AND MERCHANTS' BANK, PHOENIX, as Intervener, Appellant. vs. ARIZONA MUTUAL SAVINGS AND LOAN ASSOCIATION and ARIZONA TRUST COMPANY and SIMS ELY, as Receiver for the ARIZONA MUTUAL SAVINGS AND LOAN ASSOCIATION and ARIZONA TRUST COMPANY, and the Intervening Petitioners Who were Allowed to Intervene in the cause Entitled CHARLES W. CLARK, Complainant, vs. ARIZONA MUTUAL SAVINGS AND LOAN ASSOCIATION and ARIZONA TRUST COMPANY. Defendants, in the Court Below, by the Decree of March 12, 1914, Appellees.	No. 2425 PETITION FOR REHEARING

TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND TO THE HONORABLE JUDGES THEREOF:

The petition of the Farmers and Merchants' Bank, Phoenix, appellant above named, respectfully shows to this Honorable Court and alleges:

1. Heretofore and on February 1, 1915, this learned Court rendered a judgment of affirmance in the above entitled cause affirming as to this appellant a certain alleged decree and order entered in the District Court of the United States for the District of Arizona on March 12, 1914, in a cause entitled in that court Charles W. Clark, Complainant, against the Arizona Mutual Savings & Loan Association and the Arizona Trust Company, Defendants.

II. And your petitioner respectfully alleged that this learned Court erred in deciding said appeal and in affirming the decree and order of March 12, 1914, in the court below in each and all of the following respects:

1. In deciding that "The decree of February 27, 1913 denies the rights of a large number of stockholders who are not named therein and unjustly distributes the money of the insolvent Loan Association contrary to the pleadings and the purposes of the suit."

And in deciding that the decree arbitrarily decrees repayment to certain named stockholders of the Loan Association and excludes from the benefits of the decree a large number of stockholders who had not appeared therein and to whom no notice was given.

And also in deciding in effect that the decree of February 27, 1913, is void for error of law appearing on the face thereof or for any cause.

Your petitioner respectfully alleges that the decision here complained of results from a miscon-

ception of the situation as it actually existed below when the decree of February 27, 1913 was rendered and from the impression that an injustice was then done to the intervenors named in the petition of July 15, 1913.

But no injustice was done to such or to any other persons. These last named intervenors were admittedly Trust Company stockholders and were not then Loan Association stockholders. As appears from their own intervening petition, their sole claim to the right to rescind their exchange of stock or stock subscription in the Trust Company and to be restored to their status as Loan Association stockholders depends entirely upon proof that some time in 1911 they were induced by fraudulent representation to exchange their stock in the Loan Association for stock in the Trust Company.

The record in cause 2417 shows that many of these intervenors were admitted as parties to the record in the cause but they voluntarily withdrew therefrom preferring to condone the fraud which they said had been perpetrated upon them and to cast their lot with the Trust Company and they continued in this condition until after your petitioner recovered its judgment against the Trust Company when they and a large number of other Trust Company stockholders sought to rescind their exchange or stock subscription to the end that they might thereafter appear as Loan Association stockholders instead of as Trust Company stockholders. The persons named in the decree of February 27, 1913, were all Loan Association stockholders, including those who had promptly urged and ob-

tained the right to rescind. There were approximately 59 Loan Association stockholders whose claims aggregated approximately $20,000 in amount who were named in and derived the benefits of the decree, althought no one represented them below and all that any of these stockholders received was a lien on the assets of both companies for the amount each had paid into the companies without interest.

They voluntarily surrendered all attempts to recover on their contract, namely about $1000, for every $600, paid in and recognized the complete abrogation of their contracts with the insolvent Loan Association. If any of those named in the decree of February 27, 1913, were borrowers the receiver had ample power to collect the debt before he paid them in accordance with the terms of the decree, so that no improper advantage was obtained over anybody else because of the supposed existence of such loans.

Equality in the distribution of an insolvent's estate is the fundamental basis of equity and justice.

As Circuit Judge Sanborn said in Nichols vs. Waukesha Canning Co., 195 Fed. 807, 815:

"As a general rule this maxim (equality is equity) governs all insolvent estates. All creditors are to be regarded as having equal claims unless some can show either a legal priority or a better equity."

The effort of the decree of February 27, 1913, was to bring about perfect equality among all the

Loan Association stockholders and this was actually accomplished.

It would indeed have been an extraordinary distribution of the Loan Association's assets at that time to have awarded persons who were no longer stockholders of the Loan Association a share therein.

After the decree of February 27, 1913, was rendered and when notwithstanding its leniency to the Trust Company and its stockholders, the Trust Company was again confronted with failure and complete inability to discharge its obligations to supervening creditors, it was then too late for the Trust Company stockholders to repent of their unfortunate choice and determination and seek to deprive your petitioner of its rights by seeking to share equally with those named in the decree of February 27, 1913.

They were no long entitled to share equally with the diligent.

The diligence of those named in the decree of February 27, 1913, created a superior equity in their favor as against those who subsequently were permitted to intervene.

Equity aids the vigilant, not those who slumber on their rights.

Assuming that these latter persons had any rights whatever superior or equal to those of your petitioner, which is respectfully denied, nevertheless the matters decided by this learned Court as aforesaid were erroneous.

As to your petitioner, the decree of February 27, 1913, was immune from collateral attack and is now immune from review and correction here.

Your petitioner was not a party to the decree but by virtue of its judgment acquired a vested property right in the surplus created by it.

So far as your petitioner is concerned, it is wholly immaterial whether or not the Court that granted it committed error in its rendition in any of the respects asserted. Such errors as were committed, if any, were never corrected by a court having jurisdiction to revise the decree for error and your petitioner's rights therein became vested and were not subject to be divested by any act of the parties or the court that rendered the decree or long after the time to appeal therefrom had expired by this learned court upon an appeal from an entirely different decree and order.

But on the merits of the foregoing assertions your petitioner respectfully alleges that the decree of February 27, 1913, is not void for any cause and does not deny the rights of a large or any number of stockholders who are not named therein, but on the contrary as conclusively disclosed by the face of the decree and record (Record 7, 8, 43) every stockholder of the Loan Association was specified therein and the rights of each recognized and protected as such. Nor did such decree unjustly distribute the money of the insolvent Loan Association contrary to the pleadings and the purpose of the suit, for it appears from the record that each stockholder was awarded a lien upon the properties of both companies to secure the repayment to

each stockholder of the amount each had paid in to such companies. This manner of distribution resulted in perfect equality among all of the Loan Association stockholders and was consequently a just method of distribution and no Loan Association stockholders complain of it or assert that they as Loan Association stockholders were omitted from the terms or benefits of the decree of February 27, 1913.

The decree of February 27, 1913, did not assume to adjudicate the rights of any of those who had been stockholders of the Loan Association, but who at the time the decree was rendered had ceased to be Loan Association stockholders and had become and then were stockholders in the Trust Company, because the suit was brought for the benefit of Loan Association stockholders and to distribute its assets to its stockholders and not for the benefit of Trust Company stockholders or to distribute the assets of the Trust Company, in consequence of which your petitioner respectfully alleges that stockholders of the Trust Company who had not secured judicial authority to rescind their exchange of stock in the Loan Association for stock in the Trust Company were not similarly situated or in the same class with stockholders of the Loan Association who had never exchanged their stock in the Loan Association for stock in the Trust Company or otherwise impaired their status as Loan Association stockholders. Nor were such stockholders in the same class with those who had exchanged their stock and who had secured after a trial judicial authority to rescind the exchange in question and your petitioner respectfully alleges that stockholders of the Trust Company were obvi-

ously not proper parties to the suit and were not entitled to individual notice of the proceedings in the court below, although each such stockholder in reality had such notice by and through their corporation, the Trust Company, because Trust Company stockholders were not in the same situation as Loan Association stockholders for whose benefit exclusively the proceeding in the court below was instituted. None of the Trust Company stockholders were entitled to rely and in fact did not rely upon the complainant below or any of the intervenors therein prior to the rendition of the decree, to obtain for such Trust Company stockholders any relief whatever, but said Trust Company stockholders relied exclusively upon the benefits which the decree of Feb. 27, 1913, conferred upon them by and through their corporation, the Trust Company, and as such accepted the benefits of that decree long after the decree was granted and long after the expiration of the term at which it was entered and it was not until three days after the recovery by your petitioner of a judgment of $18,500.00 against the defendant Trust Company that its stockholders sought to repudiate their status as Trust Company stockholders and by so doing to avoid the consequences of their acts and obtain priority in the distribution of their insolvent corporation's assets over and above your petitioner as its lawful judgment creditor.

Nor was the relief awarded by the decree of February 27, 1913, contrary to or not within the pleadings or the purpose of the suit, since it is not inconsistent to award a complainant a lien on property where he specifically prays restitution of the whole:

Jones vs. Missouri Edison Electric Co., 144 Federal, 765-768.

Erie Railroad vs. Dial, 140 Federal, 689, 691.

Smith vs Township, 150 Federal, 257, 261,

for it is apparent that a court which admittedly has jurisdiction to grant the whole of the relief prayed must have jurisdiction to grant a portion of the relief to which the parties were entitled.

And even if this were not so, the particular relief awarded was properly grantable under the prayer for general relief, especially where, as shown by the record in cause No. 2417, the defendants were present at the trial actively participating therein, contesting the cause and actually inducing the trial court to award the particular relief which it finally granted.

These latter circumstances were entirely absent in the case of Reynolds vs. Stockton, 140 U. S., 254, relied upon by this learned Court to support its judgment of affirmance.

In support of the foregoing proposition, we respectfully direct attention to the following:

Lockhart vs. Leeds, 195 U. S., 427.

Walden vs. Bodley, 14 Pet., 156, 164.

Backus vs. Brooks, 195 Federal, 452, 454.

Underground Electric Railroad Co. vs. Owsley, 169 Federal, 671-675.

Taylor vs. Earl, 8 Hun., 1-3.

But your petitioner respectfully alleges that even if, as asserted, the decree of February 27, 1913, has denied the rights of a large number of stockholders either of the Loan Association or of the Trust Company and has unjustly distributed the Loan Association money contrary to the pleadings and the purpose of the suit, yet nevertheless mere error and not total invalidity resulted and the decree of February 27, 1913, is nevertheless valid and binding as to your petitioner and other third parties after the expiration of the term at which it was entered and is immune from collateral attack at the instance of persons not parties to the record in the court below at the time of the rendition of the decree of February 27, 1913, and your petitioner respectfully alleges that even in the event supposed the court below was wholly without jurisdiction to vacate the decree of February 27, 1913, after the expiration of the term at which it was granted.

Re Dennett, 215 Federal 673.

Re Metropolitan Trust Co., 218 U. S. 321.

U. S. vs. Mayer, 35 S. C. R. 16.

Hine vs. Morse, 218 U. S. 493, 505.

In Re Dennett, 215 Federal 673, 674, this learned Court said: "We are impressed that where a court has attempted subsequent to the term at which a judgment or decree is rendered, to set aside or annul such judgment or decree, it presents a case where the court has acted wholly without jurisdiction or power in the premises and its act in that respect is void and that mandamus will lie to correct the error."

We respectfuly submit that the present affirmance of the decree of March 12, 1914, is in irreconcilable conflict with the opinion of this learned Court above quoted. It is true that in expressing the opinion quoted this learned Court expressly reserved final judgment thereon until a hearing upon the return of the alternative writ of mandamus granted in cause 2417, but we respectfully remind the Court that it is now asserted that the invalidity of the decree of February 27, 1913, results because "such errors of law appear upon the face of the decree (of February 27, 1913) as to render it void."

We respectfully submit that such errors of law as are now said to appear upon the face of the decree of February 27, 1913, and which it is said render it void, were equally apparent when this learned court rendered its opinion in cause 2417 above cited. The record has not changed and we respectfully submit then and now conclusively demonstrates the total absence of power in the court below to render the decree of March 12, 1914, from which it necessarily follows that the affirmance here complained of was and is erroneous.

2. But your petitioner alleges that further grave error was committed by this learned Court in that by its said decision and judgment this Court has in effect decided and determined that stockholders in an insolvent corporation may seek and exercise the remedy of rescission after the rights of a judgment creditor have intervened and attached to the subject matter and by so doing that such stockholders may obtain preference and priority in the distribution of the insolvent estate paramount and superior in equity to that of the judgment creditor

and in this connection your petitioner respectfully alleges that such decision is not only contrary to law;

American National Brokerage Co., 193 Federal 772; Meehan vs. Southern M. I. C., 72 Federal 957, 960; Meehan vs. Carlson, 107 Pacific 755, 760; Keyes vs. Medicine Co., 148 Northwestern 505, 506.

but is in this respect in direct conflict with two decisions of the United States Circuit Court of Appeals for the Eighth Circuit, namely;

Scott vs. Abbott, 160 Federal 573, 580-582; Marks vs. Merrill Paper Co., 203 Federal 16-19.

That this is theinevitable effect of permitting Trust Company stockholders to rescind their stock subscriptions after the rights of the creditor have supervened is obvious.

Rescission restores these Trust Company stockholders to their status as Loan Association stockholders and to the extent of the many thousands of dollars represented by their claims diminishes and in fact completely wipes out the fund and assets upon which your petitioner acquired and possessed an adjustable lien to the extent of $18,500.

3. And your petitioner respectfully alleges that further error was committed by this learned

Court in deciding that "The decree of March 12, 1914, rectifies the errors of the former decree and provides for a just distribution of the assets of the corporation," in that the decree of March 12 does not even contain a direction to the Master to take proof of claims against the Trust Company and indeed could not lawfully so direct since with your petitioner's bill dismissed there is no proceeding pending in the court below which in any way relates to the defendant Trust Company and the winding up of its affairs.

We respectfully submit that the decree of March 12, 1914, in reality is unjust and inequitable in that in effect without a hearing and without the taking of any evidence whatsoever it destroys the vested property right of your petitioner in and to the surplus moneys resulting from the decree of February 27, 1913, and in reality produces great confusion, for the decree of March 12 does not specify to what extent the decree of February 27, 1913, is invalid and as already indicated, in effect sanctions and authorizes the stockholders in the defendant Trust Company in March, 1914, long after the recovery of your petitioner's judgment to exercise the remedy of rescission for a fraud alleged to have been perpetrated upon each such stockholder separately, sometime in the year 1911 and thereby awards to such stockholder priority in the distribution of the insolvent assets over your petitioner and moreover utterly destroys the stability and finality of the decrees and judicial proceedings of the Federal Court in the District of Arizona, while the order of March 12, 1914, finally dismisses your petitioner from the court below, a court which admittedly had exclusive jurisdiction to grant your

petitioner any relief in the premises, denied your petitioner the right of process in order that the defendants might not be required to respond to its demands which was a simple but effective denial of the right of your petitioner to have a hearing, denied your petitioner's application to extend the receivership of the Trust Company to its lawful judgment and denied your petitioner's prayer to marshal the assets of the Trust Company, deprives your petitioner of its right to enforce its judgment against the Trust Company stockholders whose stock subscriptions remained unpaid as alleged and takes and appropriates all of the assets of the Trust Company (including assets acquired after its transactions with the Loan Association upon which your petitioner had acquired an equitable lien and dedicates these assets to the interests of mere stockholders in the Trust Company, many of whom were never even stockholders of the Loan Association at any time, thus leaving your petitioner wholly remedyless in the premises completely stripped of its rights.

4. And your petitioner respectfully alleges that further error was committed in deciding that " * * * even if the errors of law are not such that they might thus have been corrected, the case is clearly one in which those results could have been obtained by a bill of review for that purpose and the petition filed July 15, 1913, which was filed within the time allowed for taking an appeal from the prior decree, may properly be regarded as a bill of review."

And the error predicated thereon is this: that the errors complained of in the petition of July 15,

1913, were not errors of law arising on the face of the record nor were the intervenors named in the intervening petition of July 15, 1913, competent to file a bill of review because they were not parties to the original record when the decree of February 27, 1913, was entered and moreover the petition of July 15, 1913, wholly fails to negative the gross laches of which those petitioners were obviously guilty notwithstanding their mere denial thereof.

No proper case is shown for the exercise of such extraordinary leniency towards the intervenors. The Supreme Court of the United States in Hopkins vs. Hebard, 35 S. C. R. 25, 27, recently said of a bill of review for newly discovered evidence: "The functions of a bill of review filed for newly discovered evidence is to relieve a **meritorious complainant** from a clear miscarriage of justice where the court is able to see upon a review of all the circumstances that the remedy can be applied **without mischief to the rights of innocent** parties and **without unduly jeopardizing the stability of judicial decrees.** The remedy is not a matter of absolute right but of sound discretion," citing cases.

Thus, all the essential elements to justify the exercise of such discretion in this instance appear to be missing.

But as an additional reason why the petitioners named in the petition of July 15, 1913, are not entitled to intervene and secure the vacation of the decree of February 27, 1913, your petitioner respectfully directs attention to a certified copy of the affidavit of one C. L. Nabers verified July 29, 1913, and duly filed in the court below, a certified copy

of which is hereto annexed and made a part hereof, a copy of which your petitioner is informed and verily believes was in the early part of August, 1913, duly served upon the receiver, and which so far as your petitioner is aware has never in any respect been denied or controverted, from which affidavit it appears, not only that all of the petitioners named in the petition of July 15, 1913, are in equity and good conscience estopped to assert the rights therein claimed by them, but that many of the persons named in the petition of July 15, 1913, never had any connection whatsoever with the Loan Association but were and always had been ordinary stockholders of the Trust Company.

And further because it appears of record herein (R. 25) that on the 14th of April, 1913, Circuit Judge Morrow sustained a demurrer to the petition filed in the court below April 5, 1913, by most of the same petitioners named in the petition of July 15, 1913, which petitions were in legal effect identical one with the other and in this connection your petitioner respectfully alleges that by whatever name the petition of July 15, 1913, may now be designated, the learned Circuit Judge to whom we have referred in effect expressly decided on April 14, 1913, that the persons therein named were not entitled to the relief prayed for or to any relief in the premises whatsoever. And for this decision of Circuit Judge Morrow, your petitioner claims a conclusive and binding effect upon the said District Court as constituted in March, 1914, as the law of the case since that decision was never reversed by appropriate appellate procedure.

Oglesby vs. Atrill, 14 Federal 214, 215.

Gayler vs. Decatur Mineral & Land Co., 112 Federal 449.

Wapeen vs. Davis, 44 Federal 532, 533.

Cornwall vs. Davis, 44 Federal 533.

Hadden vs. Natshang Silk Co., 84 Federal 80.

Raphael vs. Frank, 118 Federal 678.

Meeker vs. Lehigh Valley Railway Co., 175 Federal 320.

Montgomery vs. McDermott, 99 Federal 502.

Cleveland vs. Cleveland, etc., R. Co., 93 Federal 113.

Central Trust Co., vs. Wabash Railroad Co., 144 Federal 476.

Thus it appears that notwithstanding the finality of the decree of February 27, 1913, and of the total absence of power in the District Court in the District of Arizona as constituted in March, 1914, to revise and correct that decree for mere error, that the learned District Court as constituted on March 12, 1914, disregarding the finality and conclusive effect of the decision of Circuit Judge Morrow in sustaining the demurrer on April 14, 1913, reversed Judge Morrow and revised his decision and now this learned court affirms the District Court in such reversal.

5. And further error is predicated upon this learned court's assertion, "In that decree (referring to the decree of March 12, 1914) the rights of the appellant are fully protected and provision is made for presentation of its claim to the Master in Chan-

cery to be paid out of the available funds which may remain in the Trust Company" because it is inadvertently supposed that the decree of March 12, 1914, contains such provision, which a careful inspection thereof shows is not the case.

6. And further error is alleged to have been committed in affirming the denial of the petitioner's right to intervene below and in holding this right to be within the properly exercised discretion of the court below, since as your petitioner respectfully alleges the right in this type of case, is absolute and not dependent upon the discretion of the court below and if so dependent that discretion was improperly exercised in denying intervention to your petitioner as a judgment creditor and in granting it to mere stockholders.

Credits Commutation Co. vs. United States, 91 Fed. 573; 177 U. S. 315, 316.

Myers vs. Fenn, 5 Wall. 207.

Richmond vs. Irons, 121 U. S. 43, 47.

National Bank vs. Allan, 90 Federal 545, 555.

Hubb vs. Bidwell, 151 Federal 564.

And since your petitioner respectfully alleges that the decision of this learned court is not only erroneous in the matters specified which require a rehearing thereof and a reversal of the decree and order complained of but at least in two respects presents errors of so grave a character involving considerations of such public importance as to cause it to be the duty of the Supreme Court of the United States to review and revise the proceedings

by certiorari if not corrected here, your petitioner humbly prays that in the event that its application for rehearing is denied this learned Court will either certify to the Supreme Court of the United States the question hereinafter propounded or in the alternative that it grant a stay of its mandate herein for a reasonable time hereafter in order that your petitioner may have a reasonable opportunity in which to apply to the Supreme Court of the United States for the certiorari above referred to.

And as evidence of your petitioner's good faith in this request and to show that the matters herein are of such character as to justify this court in certifying the question herein involved to the Supreme Court of the United States for determination, your petitioner respectfully directs attention to the case of the United States vs Mayer, 35 S. C. R. 16, where the United States Circuit Court of Appeals for the second circuit deemed a similar question of sufficient consequence to justify its certification to the Supreme Court for determination.

And in support of your petitioner's respectful contention that this case is one in which certiorari should be granted by the Supreme Court of the United States in the event that the errors here complained of are not corrected in this learned Court, your petitioner respectfully asserts that by affirming the decree of March 12, 1914, this learned Court has sanctioned a district court of the United States while acting wholly without jurisdiction in vacating a valid final decree in equity after the expiration of the term at which it was granted, which we respectfully submit constitutes a matter of such gravity that it will be corrected by the Supreme Court of

the United States by the issue of extraordinary writs out of that court when necessary so to do.

William Cramp Sons vs. Curtis Turbine Co., 228 U. S. 645, 650.

Re Metropolitan Trust Co., 218 U. S. 321.

And further, because, as already indicated, this learned Court's decision is in conflict in the respect heretofore stated with those of the United States Circuit Court of Appeals for the Eighth Circuit in the cases cited and it is desirable in the public interests that such conflicts should be settled by the Supreme Court of the United States and should not exist.

Wherefore, your petitioner respectfully prays for the vacation of the judgment of affirmance and that a rehearing be granted and that thereupon the decree of March 12, 1914, and the order of the same date be reversed or in the event that rehearing is denied that this learned Court certify to the Supreme Court of the United States the question of whether or not the United States District Court for the District of Arizona had jurisdiction on March 12, 1914, after the expiration of the term at which the decree of February 27, 1913, was rendered to vacate that decree as against the rights of your petitioner herein as a judgment creditor of the defendant Trust Company in and to the surplus created by the decree of February 27, 1913, upon motion of persons not parties of record to the cause when the decree of February 27, 1913, was entered or in the alternative to stay the issuance of the mandate herein for a reasonable time after the decision of

this motion to enable your petitioner to apply to the Supreme Court of the United States for a certiorari to bring up to that court the record herein for review and correction.

And your petitioner as in duty bound will ever pray.

FARMERS AND MERCHANTS' BANK, Phoenix.

PAUL RENAU INGLES,

Solicitor for Petitioner, Fleming Building, Phoenix, Arizona.

CERTIFICATE OF COUNSEL

As counsel for the petitioner herein, I respectfully certify, that in my judgment the grounds and reasons urged in the foregoing petition for a rehearing of the above entitled cause and for the other relief therein prayed for are well founded and I further certify that this petition for rehearing is not interposed for delay.

PAUL RENAU INGLES,

Solicitor for Petitioner.

Dated February 23, 1915.

PART II.

IN THE DISTRICT COURT OF THE UNITED STATES, DISTRICT OF ARIZONA

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS & LOAN ASSOCIATION, AND ARIZONA TRUST COMPANY,

Defendants.

DISTRICT OF ARIZONA,
STATE OF ARIZONA,
COUNTY OF MARICOPA, } ss.

C. L. NABERS, being duly sworn, deposes and says: I am an auditor by profession and as such have been in the past engaged both by George D. Christy as Temporary Receiver of the defendant Arizona Mutual Savings and Loan Association, and Sims Ely, Esquire, as temporary and permanent receiver of both the defendants above named, and that in the course of my work for both the said receivers, I acquired and have a familiarity with the books, accounts and affairs of each of the defendants above named, and am familiar with all the matters hereinafter set forth.

I have carefully examined the books and records of both the defendant companies for the purpose of identifying each and all of the petitioners named in the petition and intervention filed herein on or about July 15, 1913, with the persons therein named by Benton Dick, Esquire, Robert E. Morrison, Esquire, and Joseph E. Morrison, Esquire; for the purposes of convenience I have divided each and all of the persons so named under the following classes.

The following persons are hereinafter referred to as those in Class One, and each and all of said persons were formerly stockholders in the defendant Loan Association, but who subsequently transferred their stock in the Loan Association for stock in the defendant Trust Company, and for the first time have appeared in this litigation in and by the said petition of July 15, 1913:

CLASS ONE

Mrs. L. B. Allison
P. W. Black
J. K. Corbett
D. W. Ellsworth
J. M. Gibbs
Wm. Ham
H. O. Jasted
M. A. Kreling
W. H. Merratt
S. Sarah Oliver
M. Pascale
E. B. Robles
R. C. Smith
Versa Willis
L. F. Kuhn
F. W. Massie
Cherora Polk
(Clara Polk)
F. E. Potts
D. Romeo
J. Willis
Herman Binkerhoff
T. R. Blonblerg
A. Chisholm
Daniel F. Groggans
M. A. Roberts
(Nellie I. Roberts)
D. Keith

Mrs. I. W. Bartholemu	J. S. Merratt
Pierce Bailey	A. P. Martin
B. Carrette	Lizzie Polk
Y. M. Gallogos	Rena Ridley
F. L. Hugert (Hubbell)	V. A. Rosenfeld
E. B. Jennings	F. T. Willis
E. A. Jacobs	

Each and all of the following persons are hereinafter designated as members of Class Two, and each of said persons were original stockholders in the defendant Loan Association, but exchanged their stock therein for stock in the defendant Trust Company, and thereafter petitioned this Court by petition filed herein on April 5, 1913, by and through their attorney, Benton Dick, Esquire, for leave to intervene herein and for the other purposes specified in the other petition, except

Elmer G. Carroll	B. Hock
J. T. Griffiths	Frances X. Conrad

each of whom were before the Court in the first intervening petition filed herein July 15, 1912, by their attorney, William M. Seabury, and who were on or about August 6, 1912, dismissed from said litigation.

CLASS TWO.

J. L. Waring	Edgar O. Brown
Mrs. C. F. Richardson	John T. Steinmetz
G. E. Phelps	Innocente Morralles
R. N. Stapley	John F. Klock
Frank W. Smakel	H. G. Hong Fong
David B. Lovell	John Wagner

August P. Neu
August Johnson
Irving Devery
Mrs. Stella Wade
Chas. Chan
Mrs. Maud Webster
C. T. Wise
Mrs. Lulu W. Carruthers
Lessuer & Co.
C. H. Chulz
Thomas A. Rickel
Mrs. Margaret Babbitt
Frank Pister
Daniel Hubbard
J. H. Barnett
R. W. Wagner
Fred Housing
G. I. Smith
Martin F. Taylor
August Schwalbe
Oscar Emerson
F. (K.) Smith
A. E. Gilliard

Each and all of the following persons are herein designated as members of Class three:

CLASS THREE

Charlotte Monroe
L. U. Frederico
John Wagner

and each of these persons are already named in the final decree of February 27, 1913. and are awarded the respective sums due to each.

Each and all of the following persons are herein designated as members of Class Four, and each and all of the persons in Class Four are and always have been stockholders in the defendant Trust Company exclusively and never at any time had anything whatever to do with the defendant Arizona Mutual Savings & Loan Association. This Class includes the following:

CLASS FOUR

R. W. Bishoff
C. L. Day
J. L. Hubbell
D. C. Palmer

Nelson Gorman	H. B. Wilcox
Minnie C. Blesi	G. I. Smith
Miss E. C. De Vine	J. G. Sturgeon
E. B. Lincoln	Joseph Morello
A. H. Curley	A. C. Sandovall
J. J. De Vine	C. T. Wise
Innocente Moralles	J. W. McLaughlin.
S. E. March	

Each and all of the following named persons are those of whom no trace of any kind or character can be found upon the books of either of the defendants. This class includes:

CLASS FIVE

Lessuer & Co.	C. N. Cotton

These persons are probably assignees of some assignor who was connected with one or both of the defendants.

It appears from the records on file with the Receiver that all of the persons named in Class One, and many of the persons included in the other Classes hereinbefore described as well, had notice as early as March, 1911, of the transfer then proposed to be made of all of the assets of the Loan Association to the Trust Company.

Many of the original proxies signed by persons in Class One are of record with the said Receiver, and pursuant to such proxies, authority was confirmed upon Leroy H. Civille, who voted at the stockholders' meeting of the defendant Loan Association held April 11, 1911, and on the adjourned

dates thereof, and that the following is a copy of the authority so conferred on said Civille by W. K. Christie in whose favor all of the original proxies on file with the said Receiver originally ran:

I hereby substitute and appoint Leroy H. Civille to vote all shares of stock of the Arizona Mutual Savings and Loan Association, a corporation, organized under the laws of Arizona, standing in my name upon the books of said corporation, and all shares of stock for which I hold proxies to vote the same, and specially hereby appoint the said Leroy H. Civille to vote at all stockholders' meetings of said corporation all of the shares of stock held and standing upon the books of said corporation in the names of the following persons, to-wit:

H. D. Underwood; Lloyd B. Christy; W. K. Christie; J. W. Edwards; F. R. Ingle; Vivian E. Moreno; Parks & Parks; Peter T. Robertson; P. O. Spittler; John Wadin; S. Y. Barkley; T. R. Blomberg; E. T. Collins; H. Capin; A. J. Dimezo; B. Duncan; R. R. Gross; E. A. Jacobs; Ed. G. Robles; Ernestina Robles; Charles F. Weber; Caroline M. Weber; W. E. Young; R. R. Brena; R. C. Brena; M. C. Durick; Maria Anna R. de Encinas; H. B. Glover; Geo. S. Hughes; Angela Marquez; Andrew P. Martin; Sarah E. Oliver; Debetrio T. Romero; Mrs. C. F. Richardson; S. M. Walker; Rosario G. Lopez; Esperanza Coeuer; J. Knox Corlett; S. H. Drachman; Emilia Elias; Clara Ferrin; Martha Kreiling; Rosilia McKay; Francisa Munguier; F. A. Pease; John Stiegler; Minnie Woddell; Yosidow Angan; Lotta B. Allison; Note Allison; P. W. Black; Jas. K. Brown, Jr.; Irving DeVry; Lunor C. Feder-

ico; Est. Mrs. Freeman Fike; Louis Hughes; Mrs. F. Pascal; Mrs. Rena Ridley; W. B. Simpson; H. A. Dalton; Mrs. A. J. Collins; A. J. Collins; H. P. Doherty; Mrs. T. C. Divz; Chester R. Freeman; Cynthia Gray; A. J. Haldin; Leogoldine Kimpf; Horace P. Merrill; Horace P. Merrill; J. S. Merrill & Son; Henry Walker; Thos. R. Wright; W. E. Wright; J. W. Angle; Lyman H. Hays; S. N. Kemp; H. A. Morgan; J. V. McCourt; H. L. McCoy; Harry O. Parks; J. B. Cook; Samuel Arneson; Meta Arndt; B. Caretto; G. Debily; Mrs. A. L. Duncan; James D. Harney; H. Hatfield; Frank Itzureiri; J. Jackson; Mark P. John; Mrs. A. Kindred; E. Marks; Miss E. A. Rogsdale; John M. Reardon; C. T. Scott Estate; Hannah S. Studley; I. W. Wallace; J. E. Warlop; J. & F. Wahlschlegal; S. K. Williams; F. M. Ruff; J. V. Shurr; J. A. Taylor; Alex. Anderson; D. Bohn; Josephine Barks; Margaret Cadwell; Fred E. Cadwell; Joe Conley; F. S. Douglas; Salbacher B. de Lucas; Jas. H. East; Mrs. M. L. Graves; W. H. Hanwood; Theo and Ole Holbane; Mrs. W. S. Hunt; Albert T. Kleinschmidt; M. Kirschwing; J. E. Lindley; Alfred C. Lockwood; L. D. McCartney; H. R. Bash; A. J. Shropshire; Ursulla M. Shultz; J. S. Scott; Edgar Thompson; P. B. Wood; R. N. French; A. M. Dyer; Frank E. Murphy; Pat Smith; R. B. Sims; C. M. Brown; Adolph Bahm; A. W. & A. M Cassou; E. Equist; D. R. McPherson; John M. Cartau; Olaf Olson; Hugo Sonoquist; E. F. Staebler; Eugene Seeleg; B. C. Smith; Maria B. Steynes; J. H. Beak; H. Bingham; Domenico Gerasa; L. H. Payne; S. F. Lanford; Eugene W. Swacher; Fred Vallero; Mrs. J. R. Martyr, Jr.; J. R. Martyr, Jr.; J. M. Welsh; Mrs. Wheaton Berault; Thos. J. Carroll; Mrs. Gladys Cotey; Lamar Cobb; Mrs. F.

D. Connor; Louis R. Crawford; Cora E. Dunnagan; Mrs. Wm. Halley; J. W. Horton; La Vern Johnson; Mrs. Jas. W. Gookby; Curry H. Love: Curry H. Love; H. C. Mix; Mrs. W. C. Marshall; Mrs. August D. Miller; Mrs. August D. Miller; William Morris; C. A. Nichols; John M. Pollerk; Mrs. Mary Proctor; Robert Russell; K. M. Schade; E. G. Schade; Richard Stephen; Mrs. S. A. Spann; John Stirrat; John Stirrat; Mrs. L. C. Tuttle; Walter Tappin; Victor Willits; Estelle Widener; E. U. Williams; Walter Wallace; E. C. Mason; Joseph Carpenter; R. W. Chserbertram; Robert G. Phillips; Jas. Alder; Ed. Barry; E. W. Clayton; E. W. Clayton; E. W. Clayton; Wm. C. Faulkner; Wm. C. Faulkner; Wm. C. Faulkner; E. W. Jones; C. W. Morris; Lucy H. Purdum; W. E. Platt; W. E. Platt; Dr. John Newton Stratton; Lee N. Stratton; John F. Weber; A. H. Ferrin; Allen Rose; Fannie R. Page; A. L De Mund; Mrs. Mary Black; W. W. Brookner; R. H. Daniel; Ada De Jacy; Elmer Decker; John L. Davis; Ida N. Frye; Globe Lumber Co.; Mrs. J. L. Gibson; Lewis C. Gibson; Alfred Hansen; Mrs. Fannie Hearn Keene; Em. Heger; Mrs. Emma C. Joyce; Jos. J. Murphy; Fred W. Moore; R. W. Mayre; A. E. Morcom; O. W. Miller; George Parr; Chas. Quinn; A. D. Rosecrans; William Sobey; S. J. Sims; Martha C. Smith; W. H. Butler & F. L Toombs; Wm. Whalley; H. P. Wightman; Kittie L. Young; William P. Rose; W. B. Rickman; H. N; Rascoe; Harry Sultan; W. H. Watts; Ed. Kilander; F. G. Pruett; J. E. Pruett; N. Beckerman; J. B. Newman; Barney Johnson; Clifford D. Fies; John H. Fitzpatrick; J. C. Givens; J. V. Hoopes; F. E. Kieren; F. E. Miller; F. E. Miller; John Roddan; J. F. Russell; Ardell M. Russell; Joseph M. Schwartz; Eugene B. Tinker; J. M. Ward; T. M.

Ward; James R. Welsh; Ira Walker; D. F. Goggans; Roy Pemberton; G. A. Patterson; Ballard Day; S. H. Goodspeed; Fred Horn; Carlos Chreton; Murial Engassen; Mrs. W. J. Jackson; Harmon Lewis; August Doctors; G. W. Miller; Clara Sotelo; Pour Wing; W. White; Anita Barnder; Barrida & Narila; H. L. Johnston; Ellis Ruiz; Ramon Sesmo; Antonio Sesma; Oscar Sesma; Rosario Sesma; L. F. Arnadrel; J. B. McNeil; J. W. McLean; Grace L. Peters; R. B. Arbalto; Aquiles Arriola; J. G. Bogard; C. Bremenkaut; E. J. Bressenkunt; E. B. Weome; John C. Harris; Rev. Henry Heitz; J. G. Keating; S. E. Kent; M. B. Morrison; W. Y. Puces; Frederic G. White; Thos. F. Weedin; F. E. White; Mrs. L. Y. Caruthers; Mrs. M. Hawkins; Leon Hawkins; Edgar Hunsaker; Dan Hibbert; Jos. E. Boble; Robt. N. Stapley; H. Brinkeshoff; Wiley H. Jones; Joseph H. Woolsey; Chas. F. Watson; Ricardo Aros; Jose Siguireros; Chas. M. Clark; Jos. Faull; R. W. Wagoner; C. D. Reppy; A. L. Boehmer; W. R. Perry; Julio Pedregan; Edgar A. Brown; Geo. V. Lester; Charlotte Monroe; Mrs. Jennie C. Partch; John B. Hughes; Rosario Sesma; Antonio Sesma; A. Pans; Concepcion Acevedo; Geo. W. Henry; David Goodwin; Pearl L. Bailey; Alfred H. Oeltjen; D. C. Palmer; M. Elizabeth Trout; Chas. A. Ridgway; Franklyn C. Potts; F. Valdez; C. S. Harrangton; Claude Marshall; M. E. Langley; W. A. Lannon; A. E. Gillard; A. Lopez; H. N. Bryan; Lloyd C. Henning; Celia A. McLean; E. A. Boyd; Chas. Cahn; Frank T. Versa & Joshua Villis; H. L. Johnston; L. P. Clanton; H. E. Kell; Cora Mae Kell; Cora J. Kell; D. P. Jones; A. C. Kell; Newton E. Kell; Amelia Sarah Kell; Alice U. Solomon; Mrs. C. S. Brown; Oscar Sesma; Ramon Sesma; Frank L. Burgett, Jr.;

Aug. Johnson; Fred W. Albright; Margurette Babbett; Balzer Hock; M. F. Taylor; J. W. Francis; August Schwalbe; Fred Hensing; Archie Chisholm; G. H. Peters; W. E. Enos; H. C. Hamlin; N. C. Kimball; Alive Myers; Robert E. Zinck; Joseph Carpenter; O. C. Emerson; Geo. K. Anderson; Walter Brown; J. W. Harris; Mrs. H. K. Street; Miss Maude Webster; S. W. McPherson; Chlora Polk; Mrs. Lizzie Polk; Miss Johanna Hanson; E. J. Doyle; Arlimew Millett; Stephena Contreras;

hereby ratifying all lawful actions that the said Leroy H. Civille may take by reason of this proxy and authority, at any and all stockholders' meetings of the said Arizona Mutual Savings and Loan Association, and especially at the meeting of said stockholders held on the 11th day of April, 1911, and at all adjournments of said meeting, and especially at the adjourned meeting held on the 20th day of May, 1911, and all subsequent adjourned meetings of said meeting.

Witness my hand this 20th day of May, 1911.

(Signed) W. K. CHRISTIE.

Witness:

(Signed) F. G. KELLEY.

I am informed and verily believe that in the latter part of July, 1912, Alfred Le Baron, who was formerly connected with the defendant Trust Company, wrote and caused to be sent to each and every stockholder whose name appeared upon the books of either or both of the defendants as then stockholders in either of said concerns, notifying each and all of said persons among other things

of the pendency of the above entitled litigation and informing each of said persons of the dishonest character of A. J. Edwards, a former officer, manager and director of the defendant Trust Company, the following letter:

Alf. C. Le Baron

Lock Box 431.

Phoenix, Arizona, July 10th, 1912.

To the Stockholders of the Arizona Trust Company.

Because of the fact that mainly through my personal efforts something over 85 per cent of the stock of the Arizona Mutual Savings & Loan Association has been exchanged for stock of the Arizona Trust Company, and my connection with both companies having terminated, I deem it the right due the former stockholders of the Arizona Mutual Savings & Loan Association that they be informed of my personal relations with both companies and the reasons which prompted the severance of my connection with them.

Under the original plan of merger, except for the gross mismanagement of the affairs of the Arizona Trust Company by A. J. Edwards and Leroy H. Civille, his secretary, an exchange of stock should not have resulted otherwise than in greatly benefiting all stockholders of the Trust Company, including those who became stockholders by an exchange of Arizona Mutual stock.

Believing for some months past that the Trust Company needed a reorganization which would compel the transaction of its business along profit-

able and honest lines, such as were contemplated at the time an exchane of stock was suggested, I caused to be made, in the month of May, at my own expense, an examination of the affairs of the Company by an expert accountant, insofar as I could obtain access to the books.

This examination was resisted by Mr. Edwards (as far as he was able to do so) who at the time, and from the organization of the Company, had entire charge of its business.

It is sufficient to say, without going into details at this time, that the report of the accountant who conducted this examination, disclosed such an absolute lack of efficiency and honesty in the conduct of its business, that I could not longer afford to be identified with it.

I am addressing this letter to you for the double purpose, first—of advising you that I am no longer connected with the Company, and am in no wise responsible for its unfortunate condition; and, second—that those who may have been influenced by any effort of mine to exchange stock of the Arizona Mutual Savings & Loan Association for stock of the Arizona Trust Company shall in the future be guided only by their own judgment in their future dealings with this Company.

While it is true that I have severed my connection with these companies, in which I have labored conscientiously for the benefit of my numerous friends and clients throughout the State, and to which I have given the best there is in me, yet I stand ready to serve every interest of every indi-

vidual who has reposed confidence in me and accepted my recommendations in making their investments.

I will gladly assist anyone who may wish to consult me as to the best course to pursue in the present difficulties and I pledge my earnest endeavor toward working out a satisfactory solution.

Yours very truly,

(Signed) ALF. LE BARON.

And further that on or about August 7, 1912, the said Le Baron caused to be mailed to each and every such stockholder in the defendant companies, a printed copy and reprint from a report published in the Arizona Gazette, a newspaper published in the City of Phoenix, on August 7, 1912, which contained a report of the proceedings had before the Honorable William W. Morrow, in the above entitled cause, on or about August 5, 1912, which said notice is, as follows:

WILL APPOINT RECEIVER IN THIRTY DAYS

Unless Arizona Trust Repays Intervenors, Judge Morrow's Decision.

San Francisco, Cal., Aug. 7.—Judge W. W. Morrow, of the United States district court, who is temporarily in charge of the federal court for the district of Arizona, yesterday heard the arguments of the attorneys in the Arizona Mutual Loan and

Savings receivership application filed before him some time since. The arguments were heard in chambers, W. M. Seabury of Phoenix appearing for some thirty-nine or more intervenors to a petition that was originally filed by C. W. Clark, asking for a receiver for the Arizona Mutual and an injunction against the Arizona Trust Company, enjoining that company, which holds the assets of the Arizona Mutual, from in any way disturbing the present status of the assets of the Arizona Mutual, Judge Kibbey, formerly a governor of Arizona, appeared for the defendant, the Arizona Trust.

After the hearing, Judge Morrow announced that he would grant the injunction and give the Arizona Trust Company thirty days in which to file a bond of $10,000 as a surety that the Arizona Trust Company would pay to each of the intervening stockholders of the Mutual the money they have heretofore paid into the Mutual, together with interest to date. The court announced that in the event the Arizona Trust did not comply with the order of the court, he would appoint a receiver for both companies.

If, however, the intervenors show that misrepresentations have been made to them in the conduct of the business, a receiver will be appointed for the Arizona Mutual Company. This case was instituted in the federal court of Arizona by C. W. Clark, a resident of California, and immediately following the filing of the petition, thirty other stockholders of the Arizona Mutual Loan and Savings Company filed a petition to intervene. It is understood that since the case was first taken up before Judge Morrow on Saturday last at Los Angeles, the Ari-

zona Trust Company settled with Mr. Clark, but the basis of the settlement is not known. Following the settlement, the application of the intervenors, however, was not dismissed, but the case was heard on its merits and the above decision rendered.

(Reprint from Arizona Gazette, Wednesday, August 7, 1912).

In addition to the matters herein set forth early in the month of September, 1912, W. T. Smith, the then President of the defendant Loan Association, caused to be mailed to all of the stockholders in said company among others, particularly to those described as Class One herein the following notice:

ARIZONA TRUST COMPANY

Phoenix, Arizona.

To the Stockholders Arizona Mutual Savings & Loan Assn., Arizona Trust Company:

In June last, a suit was instituted in the State Superior Court here by a stockholder of the Arizona Mutual Savings & Loan Assn., asking for the appointment of a receiver of these companies. This suit failed and a similar one has been instituteed in the Federal Court here, which will come up for trial in the near future. Before the trial of this case it will be necessary for me to have the views of the stockholders as to what course to pursue for the best interests of all

Therefore a meeting of the stockholders of the

Arizona Mutual Savings & Loan Assn. and the Arizona Trust Company is hereby called to meet in the office of the Arizona Trust Company, 200 W. Washington St., in the City of Phoenix, Arizona, on September 5th, 1912, at ten o'clock a. m. This meeting is an informal one for the purpose of conference only.

I would like a full attendance at this meeting, so please come if you can, and if you cannot come yourself designate some other stockholder in your vicinity as your proxy who will personally attend as your representative. A blank form of proxy is enclosed for that purpose.

The importance of this meeting should require your prompt attention to this letter. It means a great deal to you. Yours very truly,

ARIZONA TRUST COMPANY.

President.

And thereafter, the said W. T. Smith on September 17, 1912, or thereabout, caused the following notice to be sent to many of the said stockholders:

ARIZONA TRUST COMPANY

Phoenix, Arizona.

Sept. 17, 1912.

Dear Sir:—

The publicity given lately to the litigation which has been going on in connection with our company has brought me so many letters asking for information in regard to our present status that I find it very difficult to reply promptly to them with

the fullness to which they are entitled. I am, therefore, taking this means of a circular letter to answer yours among others.

The stockholders' meeting held here on the 5th inst. was very successful as regards the object for which it was called, the great bulk of the stock being represented either in person or by proxy and the discussions and explanations evidently helping to bring about the better understanding which was so much wanted. The meeting, as you know, was for conference only, but the expression of opinion was overwhelmingly in favor of the continuance of the company's affairs in the hands of the present management, recently begun.

The litigation has been temporarily settled by the court's appointment of a receiver to take charge of the assets which had already been set aside for the protection of those stockholders of the old Mutual Savings & Loan Association who had not cared to transfer into the Trust Company. The Trust Company itself (despite the very much mixed-up report of a fool reporter in one of the local papers) is not affected.

Our position has been greatly strengthened lately by the report of the examiners appointed by the Corporation Commission. In the summary of that report, which you will find in a copy of the "Democrat" mailed to you today, you will see that the Trust Company so far from being of doubtful solvency possesses assets to the extent of $150 for every $100 of preferred stock.

You will please remember that for anything

that has been done in the past by those in control of this company I am in no way responsible, my connection with its management dating back less than two months; but I am now ready and able to protect the money I have in it—and in so doing I will protect yours. There is one hundred cents to the dollar for everybody; and if we could once get these lawsuits cleared up and definitely settled so that we could get started to business again in earnest, it would only be a short time before everybody who wanted to get his money out could do so without any trouble or loss whatever.

If you have any doubt about me please inquire at any bank or financial institution in Phoenix. I will take my chance on the report of my neighbors.

Yours truly,

(Signed) W. T. SMITH,

President.

Upon information and belief, I further allege that between July, 1912, and September, 1912, the exact date of which I do not know, the said W. T. Smith caused to be sent the following notice to each and all of the stockholders:

ARIZONA TRUST COMPANY

Phoenix, Arizona.

To the Stockholders of the Arizona Trust Company.

No doubt you received one of the letters circulated by one A. C. Le Baron, who was formerly connected with this company and also identified with

the Arizona Mutual Savings & Loan Association. This gentleman, since severing his connection with these companies has apparently gone out of his way to mischievously and unduly excite the shareholders and create a feeling of unrest among them. I say mischievously, because there cannot possibly be any other motive actuating such a letter.

If he was in a position to assist you in any manner, an effort to do so would be commendable indeed. While he was an officer of this company he drew out $3600.00 in cash since Sept. 1, 1911, and has but recently sued the company for about $15,000.00 more or less for his services (?) in securing the transfer of the shares of the Arizona Mutual Savings & Loan Association stock in the Trust Company. This can scarcely be said to be in perfect harmony with his desire to help you now. It occurs to me that if he was still an officer of the company, he might not have to resort to the slow process of the law to help you by taking his $15,000.00 or more from you as stockholders. His purpose whatever it is means nothing but destruction to the company.

Now, I am a newcomer into the Trust Company, and am not justifying the acts of its former officers nor am I responsible for them. But my sole object now is to straighten out its affairs and make every dollar invested in it worth a dollar—and then some. My money is behind yours and if I can find even the passive support of my partners—for we are all partners in this concern—I will accomplish this very thing. But, of course, I can not be expected to do this if I cannot get the support of those who are most interested and from whom I naturally expect support.

I will not ask anyone for more money. I'll furnish the money. All I want is your confidence and some patience while I am working this thing out.

As to who I am, you may write any bank or financial institution in Phoenix.

Thanking you in advance for your co-operation, I, am,

Yours truly,

ARIZONA TRUST COMPANY,

(Signed) W. T. SMITH,

President.

I further allage upon information and belief that in the latter part of July, 1912, or in the early part of August, 1912, the said W. T. Smith caused the following typewritten statesent to be put in circulation among certain of the stockholders of the defendant Trust Company, and that statement last referred to is as follows:

The undersigned shareholders in the Arizona Trust Company, of Phoenix, Arizona, who were shareholders and members of the Arizona Mutual Savings & Loan Association and who have transferred our respective shares therein for shares of the preferred capital stock of the Arizona Trust Company and also shareholders of the Arizona Mutual Savings & Loan Association, who have not transferred their shares, having been informed of the suit of some of the stockholders to have a receiver appointed for the Arizona Mutual Savings & Loan Association and to set aside the transfers

which have been made by some of the Arizona Mutual Savings & Loan Association shareholders for stock in the Trust Company, desire hereby to express our satisfaction and approval of the manner in which such transfers of shares were made and to declare our absolute confidence in the present management of the Arizona Trust Company, and their ability to consumate the plans and purposes for which the company was organized.

We are opposed to the appointment of a receiver and believe that such an action would be ruinous and result in a great, if not a total, loss to all of us.

That K. M. Schade, John A. Hampton, Richard Stephens, Wade Hampton, J. M. Welsh, Mrs. M. P. Campbell, Victor Willits, Curry H. Love, Seaman & Perry, John McCartan, H. E. Dugan, Joe Conley, Mrs. W. W. Webb, by W. W. Webb, Mrs. L. B. Morris, by W. W. Webb, F. E. Murphy, T. A. Sanders, I. W. Wallace, T. E. Warlop, E. Marks, Frank S. Douglas, A. J. Shropshire, by A. S. J. S., F. T. Pomeroy, Artimus Millett, Artimus B. Millett, B. A. Leak, T. N. Clanton, H. E. Kell, D. P. Jones, C. H Schulz, J. W. Francis, Thos. A. Rickel, Fred Hensing, B. Hock, Aug. P. Neu, Aug. Johnson, F. W. Smakel purported to sign one of the statements so circularized as aforesaid.

It appears from the records of this court on file in the City of Phoenix, that on or about April 14, 1913, the Honorable William W. Morrow heard argument on a motion of the petitioners named in the petition filed herein April 5, 1913, for leave to intervene and upon the hearing of said motion de-

nied each of said persons leave to intervene in the above entitled cause upon the ground that the said petition and intervention did not contain facts sufficient to entitle said petitioners or intervention the right to intervene.

About the first week in June, 1913, the Receiver herein declared and paid a dividend of ten (10) per cent to each of the persons named in the final decree herein on February 27, 1913, and I am now informed by the said Receiver that he has in his possession approximately Twelve or Thirteen Thousand Dollars available for the purpose of paying the liens established and fixed by the terms of the final decree of February 27, 1913, and that due to the filing of the petition intervention herein by Benton Dick, Esquire, and Messrs. Morrison, on July 15, 1913, and to a request made upon the Receiver by said attorneys not to declare or pay any further dividends on account of the final decree of February 27, 1913, until the application of Mr. Dick's clients to intervene through their petition of July 15, 1913, could be heard and disposed of, he preferred not to make any further payments under the decree unless instructed so to do by the Court, and that for this reason alone no further dividends will be declared unless so instructed by the Court.

C. L. NABERS.

Subscribed and sworn to before me this 29th day of July, 1913.

B. L. RUDDEROW,

Notary Public.

My commission expires Sept. 26, 1916.

UNITED STATES OF AMERICA, DISTRICT OF ARIZONA, SS.

I, George W. Lewis, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect and complete copy of the affidavit of C. L. Nabers, verified July 29, 1913, and duly filed herein in the cause of Charles W. Clark, complainant, vs. Arizona Savings and Loan Association and Arizona Trust Company, defendants, being cause Equity No. 53 in this court.

Witness my hand and the seal of said court affixed this 23rd day of February, A. D. 1915.

GEORGE W. LEWIS, Clerk.

By R. E. L. WEBB, Deputy Clerk.